

To: Participants in the Energy Market Information Proceeding{PRIVATE }

From: Caryn Hough, Senior Staff Counsel

Subject: Comments on the September 5, 1997 Filings on Confidentiality

Date: September 15, 1997

Staff Response to Comments

The following is a summary of staff's response to the September 5, 1997 joint comments from SCE, PG&E, and SDG&E on staff's proposed changes to the Commission's confidentiality regulations:

§ 2505(a): I have modified the language relating to disclosure of documents in the application process; see new § 2505(a)(3)B) and new § 2606. These changes improve the consistency of the Commission's regulations with the provisions of the Public Records Act (Govt. Code section 6250 et seq.), and address the issue raised by the language of the utility proposal.

§ 2505(b)(1)(A)(iv) - (vi): I deleted the requirement that an application contain information explaining why a submittal should be kept confidential, whether the data in the submittal can be aggregated, and how confidentiality has been maintained, for submittals that are eligible for automatic designation under § 2505(a)(5). However, a similar deletion would be inappropriate for applications for confidential applications. When automatic designation is unavailable and a confidentiality determination is more complicated, both the Commission and applicants will benefit from Chief Counsel decisions on petitions for information that include consideration of this information.

2505(b)(1)(C)(i): I prefer to retain the current process in which failure to submit the information required for an application does not, at least initially, result in denial of an application. The current process allows for deferral of a decision on an incomplete application to allow the applicant to submit the missing information. Only if the applicant fails to respond to the Executive Director's written specification of the missing information will the Executive Director deny the application. The substitution of the word "missing" for the word "additional" is reflected in the attached draft in new § 2505(a)(3)(A). The reference to the Public Records Act, however, is retained.

§ 2505(b)(1)(C)(iii): I modified the proposed language to reflect the terms of § 2507 and placed it in a new subsection of § 2505, as follows: (d) All documents eligible for confidential treatment pursuant to this section shall be treated as confidential by the Commission except as provided in Section 2507. I believe that this language addresses the issue raised by the utility proposal.

§ 2505(b)(1)(D): This language has been amended to simply state that a repeated application for confidential designation which meets the requirements of the subsection shall be granted. The amendment is now found in § 2505(a)(4).

§ 2506(b)(1): The proposal that the request for release of a record for which a petition for copying or inspection has been received be in writing has been incorporated, although it is the Chief Counsel who will be making the request. As stated above, I believe that the information requirements for the application process should not be moved to the time when a petition for copying or inspection is received, as in the case of a complicated determination, the Chief Counsel will not have sufficient time to properly consider the information prior to making a decision on the petition.

§ 2506(b)(2): I have amended the decision process to delegate the decision which much be made within ten days to the Chief Counsel, but to allow an optional appeal to the full Commission.

§ 2506(c) : A similar change has been made and is reflected in the attached draft.

§ 2507(a): This change was made and can now be found in § 2507(c)

Additional Proposed Changes

In addition to the changes discussed above, I have refined the draft language in response to comments with staff. Specific new changes include:

1) I amended the language in the automatic designation section (Section 2505(a)(5)), and added placeholder language concerning the data that may be submitted under SB 1305.

2) I changed the structure of Section 2507 (concerning disclosure of confidential records) to more clearly distinguish between those situations in which confidential data is released in its confidential form, in which it is released in aggregated form, and in which it is released because the information is no longer entitled to confidential treatment, including situations in which person holding the privilege of confidentiality has decided to waive the privilege.

Next Steps

I have attached a copy of the newest proposal which incorporates the changes discussed above. I also anticipate that the attorneys working with the Commission's contracting process will make some additional minor changes to the language of Section 2505(c)(2). I am still planning to file with OAL in early October, although the Committee must make a final review of the changes prior to submission with OAL.

All of you are on the service list for the OAL filing and will therefore receive a copy of the Notice of Proposed Action, Initial Statement of Reasons, and Express Terms when they are filed; if there is a significant delay in the submission, I will provide notice to the participants of the scheduling implications.

Thank you for your efforts on this portion of the Energy Market Information Proceeding!

Article 2. Disclosure of Commission Records

§ 2501. Policy.

The California Legislature has declared that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state, and has also recognized that there are sound reasons for protecting privacy. The Commission has adopted these regulations so that members of the public will fully understand and be given the opportunity to exercise their right to inspect and copy Commission records with the least possible delay and expense, and so that legitimate interests in confidentiality will be protected.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Sections 6250 and 6254, Government Code and Sections 25223 and 25321, Public Resources Code.

§ 2502. Scope.

This Article applies to inspection and copying of all records. It applies to any person making any request to copy or inspect records. It applies to any request by any person for the commission to keep a record confidential, including, but not limited to, requests pursuant to Section 25321 of the Public Resources Code.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code, and Section 6253(a), Government Code. Reference: Sections 25223 and 25321, Public Resources Code.

§ 2503. Construction and Definitions.

(a) This Article implements the California Public Records Act (Sections 6250-6261 et seq. of the Government Code) and shall be construed in a manner consistent with that Act.

(b) ~~Unless the context requires otherwise, f~~For purposes of this Article the following definitions in the California Public Records Act and the following definitions shall apply:

~~(1) "Record" means any writing containing information relating to the conduct of public business prepared, owned, used, or retained by the Commission, regardless of physical form. "Record" includes "confidential record" as defined by Section 2503(b)(4).~~

~~(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, or any other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, on any paper, map, magnetic or paper tape, photographic film or print, magnetic or punched card, disc, drum, or other document.~~

~~COMMENT: The definitions of "record" and "writing" are derived from Sections 6252(d) and 6252(e) of the Government Code. These definitions are designed to be as broad as possible and to require a focus on substantive information rather than on form. As the Legislative Committee which drafted the Public Records Act stated, "[the definitions are] intended to cover every conceivable kind of record that is involved in the governmental process and will pertain to any new form of record-keeping as it is developed. Only purely personal information unrelated to the conduct of the public's business' could be considered exempt from [these] definition[s], i.e., the shopping list phoned from home, the letter to a public officer from a friend which is totally void of reference to governmental activities." ("A Final Report of the California State Assembly Statewide Information Policy Committee," Appendix to Journal of the Assembly, 1970, Volume 1, page 9.)~~

(31) "Private third party" means any person other than a federal, state, regional, or local governmental body or a person under contract to such a governmental body.

(42) "Confidential record" means a record which has been determined to be confidential and unavailable to the public pursuant to Section 2505.

(53) "Applicant" means a private third party requesting the Commission to keep a record confidential pursuant to Section 2505.

~~(6) "Application" means a request, pursuant to Section 2505, that the Commission keep a record confidential.~~

(74) "Petitioner" means a person requesting to inspect or copy a confidential record pursuant to Section 2506.

(85) "Petition" means a request, pursuant to Section 2506, to inspect or copy a confidential record.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code and Sections 6250-6261. Government Code.

§ 2504. Inspection and Copying.

(a) — Requests. This section applies to all records, except records deemed confidential, which are subject to the provisions of Section 2506.

(b) A request to inspect or copy a record may be made orally or in writing to the Office or Division where the record is kept, to the Executive Director ~~or to the Communications Office~~. The Public Adviser will assist persons in requesting records. A request shall describe the record sought in sufficient detail so that it can be identified and found by a Commission employee. ~~Persons requesting to inspect or copy records need not provide any information about their reasons for wishing to examine records.~~

(~~b~~c) Time and Place. A request to inspect or copy a readily identifiable and available record shall be satisfied within ~~eight working hours~~ ten days of receipt of the request unless the need to complete processing or filing of the record, the use of the record by another person or a Commission employee, the volume of requests, ~~or~~ the unavailability of Commission employees, or other unusual circumstances renders such a response impracticable, in which case the Commission will notify the person making the request of the need for an extension within ten days of the request. Such extension shall not exceed ten working days. All records except records determined to be confidential pursuant to Section 2505 or Section 2506 shall be made available for inspection and copying Monday through Friday, generally between 8 a.m. and 5 p.m. at the Commission's offices. ~~Records submitted to the Commission but not yet processed or filed are not available for inspection or copying until all necessary processing is completed; provided, however, that no processing or filing shall delay making a record available for more than two working days.~~ The Executive Director shall make reasonable efforts to provide facilities for inspection of records, including a desk for notetaking.

(~~e~~d) Protection of Records.

Records may be inspected or copied only at Commission offices. The Executive Director may designate a particular place for the public to inspect or copy records. He or she may establish procedures for responding in a fair and orderly manner to numerous requests, including, when strictly necessary to prevent disruption of Commission functions, establishing a specific time each day for inspection and copying. He or she may require a Commission employee to be present at the time of inspection or copying, but such employee shall not disturb a person inspecting or copying records. Where necessary, copies of records rather than originals may be provided for inspection.

~~COMMENT: These provisions are for the protection of records and to allow the Commission to function smoothly while responding to requests for records. They will not be used in any way to delay or hinder inspection or copying of records. The rule in Section 2504(b) that records are available between 8 a.m. and 5 p.m. will be overridden only when strictly necessary to prevent disruption of Commission activities.~~

~~(de)~~ Computer Records.

Inspection and copying of computer records and other records whose form makes inspection or copying difficult or impracticable shall be in a manner determined by the Executive Director. If providing an exact copy is impracticable, some type of copy shall nevertheless be provided.

~~(ef)~~ Copies.

Except for records determined to be confidential pursuant to Section 2505 or Section 2506, copies and certified copies of all records are available to any person for a fee. ~~The fee which~~ shall be paid at the time a request is made. ~~A request for a copy of a readily identifiable and available record, accompanied by proper payment, shall be satisfied within ten working days.~~ The fee for providing a copy or a certified copy shall be no higher than the actual cost of providing the copy, or the prescribed statutory fee, whichever is less.

~~_____ (f) _____~~ Requests for Confidential Records.

~~_____ If a person requests to inspect or copy a record determined to be confidential pursuant to Section 2505 or Section 2506, the Staff shall:~~

~~_____ (1) _____~~ inform the person that the record is confidential and is unavailable;

~~_____ (2) _____~~ briefly explain the procedures available to obtain confidential records pursuant to Section 2506;

~~_____ (3) _____~~ give the person a copy of these regulations;

~~_____ (4) _____~~ give the person a copy of the Executive Director's determination of confidentiality, or the Commission's, as the case may be; and

~~_____ (5) _____~~ inform the person of the assistance available from the Public Adviser.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code and Sections 6253(a), 6256 and 6257, Government Code.

§ 2505. Designation of Confidential Records.

~~———— No confidential record, or record which is the subject of a pending application, shall be disclosed except as provided by Section 2506 or 2507, unless disclosure is ordered by a court of competent jurisdiction.~~

~~———— (a) Application for Confidential Designation.~~

(a) Third Parties.

(1) Any private third party giving custody or ownership of a record to the Commission shall indicate any desire that it be designated a confidential record and not publicly disclosed but if, Failure to so indicate at the time the record is submitted to the Commission is not a waiver of the right to request confidentiality later; however, if the Commission releases a record to a member of the public after it has been submitted but before a request for confidentiality has been received, the Commission cannot thereafter keep the record confidential. An application for confidential designation itself is a public document and shall:

(4A) be on a sheet or sheets separate from but attached to the record;

(2B) specifically indicate those parts of the record which should be kept confidential;

(3C) state the length of time the record should be kept confidential, and provide justification for the length of time;

(4D) cite and discuss ~~(i) the provisions of the Public Records Act or other law which allow the Commission to keep the record confidential and (ii) the public interest in nondisclosure of the record.~~ If the applicant believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the application shall also state the specific nature of the advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others;

(5E) state whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated with other information or masked, the application shall justify why it cannot;

(6F) state whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances;

(7G) contain the following certification executed by the person primarily responsible for preparing the application: "I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge." Where the applicant is a company firm, partnership, trust, corporation, or other business entity, or an organization, or association, the certification shall also state that the person preparing the request is authorized to make the application and certification on behalf of the entity, organization, or association.

If the record contains information which the applicant has received from another party who has demanded or requested that the applicant maintain the confidentiality of the information, the applicant shall address the items in Section 2505(a) to the greatest extent possible and shall explain the demand or request made by the original party and the reasons expressed by the original party.

(2) An improper or incomplete application shall be returned to the applicant with a statement of its defects. The record for which confidentiality was requested shall not be disclosed for ~~30~~ fourteen days after return of the application to allow a new application to be submitted.

~~COMMENT: Section 2505(a) states that failure to request confidentiality at the time a record is submitted is not a waiver of the right to request confidentiality at a later date. However, if the Commission releases a record to a member of the public after it has been submitted but before a request for confidentiality has been received, the Commission cannot thereafter keep the record confidential. *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645, 656-657, 658, 117 Cal. Rptr. 106, 113, 114 (1974). Thus, timely submission of confidentiality requests is very important.~~

~~————(b)———— Repeated Applications for Confidential Designation.~~

~~———— If an applicant's prior application for confidential designation of substantially similar information has been granted pursuant to Section 2505 or approved pursuant to Section 2506, an application for confidential designation need contain only a certification, pursuant~~

~~to Section 2505(a)(7), that the information submitted is substantially similar and that all facts and circumstances relevant to the granting or approval of the application are unchanged. Such an application shall be deemed granted or approved, as the case may be.~~

~~_____ (c) _____ Executive Director's Determination--Records Submitted by Private Third Parties.~~

~~_____ The Executive Director shall, after consulting with the General Counsel and the Information Practices Officer, determine if an application for confidential designation should be granted. An application shall be granted unless the applicant has failed to make any reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential, and that there is a public interest in nondisclosure of the record. The Executive Director or the General Counsel may, within 30 days after receipt of an application, require the applicant to submit any additional information necessary to rule on the application. If the additional information is not submitted within fourteen days of receipt of the request, the Executive Director may deny the application. The Executive Director's determination shall be in writing and shall be issued no later than 60 days after receipt of an application or 30 days after receipt of additional information, whichever is later. If the Executive Director denies the application, the denial may be appealed to the Commission within 30 days.~~

~~_____ After a denial of an application, the information sought to be designated confidential shall not be available for inspection or copying if the applicant files an appeal within the aforesaid 30 day period, and until such appeal shall have been resolved by the Commission. In any event, said information shall not be available for inspection or copying for a period of 30 days after the denial of an application.~~

~~COMMENT: The Information Practices Officer is the Commission employee responsible, pursuant to Section 1798.22 of the Civil Code, for ensuring that the Commission complies with the provisions of the Information Practices Act of 1977 (Chapter 1, Title 1.8, Part 4, Division 3 of the Civil Code, Sections 1798-1798.76).~~

(3) Executive Director's Determination.

(A) The Executive Director shall, after consulting with the General Counsel, determine if an application for confidential designation should be granted. An application shall be granted unless the applicant has failed to make any reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential. The Executive Director or the General Counsel may, within fourteen days

after receipt of an application, require the applicant to submit any information necessary for a decision that is missing from the application . If the missing information is not submitted within fourteen days of receipt of the request, the Executive Director may deny the application. The Executive Director's determination shall be in writing and shall be issued no later than thirty days after receipt of a complete application.

(B) After a denial of an application, the information sought to be designated confidential shall not be available for inspection or copying for a period of fourteen days, or, in the event that the applicant files an appeal with the Commission, within fourteen days of the Commission decision on the appeal, provided however, that any request to copy or inspect a document which is the subject to the provisions of this section shall be processed in accordance with the provisions of Section 2506.

(4) Repeated Applications for Confidential Designation. If an applicant's prior application for confidential designation of substantially similar information has been granted pursuant to Section 2505, an application for confidential designation need contain only a certification, pursuant to Section 2505(a)(1)(G), that the information submitted is substantially similar and that all facts and circumstances relevant to the granting or approval of the application are unchanged. Such an application shall be approved.

~~———— (d) ——— Appeal from Executive Director's Denial of Application for Confidential Designation. An Appeal from an Executive Director's denial for confidential designation shall be handled in the same manner as provided in Section 2506(c) and (d) of these regulations.~~

~~———— (e) ——— Executive Director's Determination--Other Records. The Executive Director may, after consulting with the General Counsel, determine that a record not submitted by a private third party should be kept confidential. The determination shall be in writing and may be appealed to the Commission within 30 days.~~

~~COMMENT: This subsection applies to records produced at the Commission, submitted by persons under contract to the Commission, and received from other agencies. In the case of information to be submitted by a person under contract to the Commission, the Public Adviser will attempt to inform potentially interested members of the public before the contract is approved by the Commission or the Executive Director. Neither the Commission nor the Executive Director will entertain requests for confidential treatment from any person under contract to the Commission after the contract has been approved.~~

~~———— (f) ——— Every three months the Executive Director shall prepare a list of applications submitted and the Executive Director's determinations made during the previous three months. The Executive Director shall give the list to each Commissioner.~~

(5) Automatic Designation. Information submitted by a private third party shall be treated as confidential without an application for confidentiality, where the entity submitting the information attests, under penalty of perjury, that the information submitted has not been previously released and falls within one of the following categories:

(A) All customer-specific information derived from energy consumption metering, energy load metering research projects, or energy surveys conducted by mail, telephone or on-site inspection where the submission of the energy consumption data in conjunction with any of the following information allows a third party to identify energy use related characteristics of an individual customer: name, account number, address, city, county, zip code, or SIC code.

(B) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(C) All information provided by a system operator to the Commission under the provisions of Public Utilities Code section 398.3(b).

(b) Other Public Entities. When another state or local agency possesses information pertinent to the responsibilities of the Commission that has been designated by that agency as confidential under the Public Records Act, the Commission may request and the agency may submit the information to the Commission without an application for confidential designation. The Commission shall treat this information as confidential.

(c) Commission Documents

(1) The Executive Director in consultation with the Chief Counsel, may determine that information generated by Commission staff is entitled to confidential treatment under the Public Records Act. Such information shall be treated as confidential without an application for confidential designation. Any private third party or other public entity may request to inspect or copy such records by filing a petition pursuant to section 2506.

(2) Contracts

(A) Information that is submitted in a bid shall be treated as confidential prior to the notice of proposed award, and any successful bidder who wishes the Commission to treat any information contained in a bid as confidential shall file a request pursuant to subsection (a)(1) of this section within five days of the posting of the notice of proposed award of the bid.

(B) When the terms of a contract between the Commission and a contractor specify that certain information that will be provided to the Commission under the terms of the contract is confidential, the Commission shall treat that information as confidential without an application for confidential designation.

(d) All documents eligible for confidential treatment pursuant to this section shall be treated as confidential by the Commission except as provided in Section 2507.

Note: Authority cited: Section 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25321, and 25364, Public Resources Code.

~~§ 2506. Request for Inspection or Copying of Confidential Records~~

~~_____ (a) Form of Request. A request for inspection or copying of any confidential record shall be a written petition to the Commission. It shall state either:~~

~~_____ (1) the reasons why the public interest in disclosure is such that the Commission should release the record, if the petitioner believes the Executive Director, or the Commission on appeal, correctly determined that the Public Records Act or other provision of law authorizes confidentiality; or~~

~~_____ (2) the reasons why the petitioner believes the Executive Director's determination, or the Commission's on appeal, was incorrect.~~

~~_____ (b) Executive Director's Reconsideration.~~

~~_____ (1) If the petition is for inspection or copying of a record received from a private third party, a person under contract to the Commission, or another government agency, the Executive Director shall request permission from the private third party, person, or agency, as the case may be, to release the record. If permission is not given, the petition shall be heard by the Commission pursuant to subsections (c) and (d) of this section.~~

~~_____ (2) If the petition is for inspection or copying of a record produced at the Commission, the Executive Director shall reconsider his or her original decision designating the record confidential. If the Executive Director determines that the record should not be released, the petition shall be heard by the Commission pursuant to subsections (c) and (d) of this section.~~

~~———— (c) ——— Commission Hearing.~~

~~———— (1) ——— The Chairman shall schedule a hearing on the petition at the next practicable Commission business meeting after the petition is received, considering the need to collect and examine the records in question, the number of records requested, other pending requests, and the need to obtain additional information.~~

~~———— (2) ——— When a record is confidential because of an application from a private third party a copy of the petition shall be sent to such person.~~

~~———— (3) ——— The Commission or the General Counsel may request additional information necessary to rule on the petition from the applicant or the petitioner. If the additional information is not received by the Commission within fourteen days of receipt of the request, the Commission may deny the application.~~

~~———— (4) ——— The petitioner and applicant shall be given notice and an opportunity to be heard at the hearing on the petition. Failure of either party to appear is not a waiver of the petition or application.~~

~~———— (5) ——— At the hearing, the Commission shall allow oral argument and may allow presentation of evidence. Any evidence shall be in writing and served no later than 10 days before the hearing, on the Commission, the petitioner, the applicant, and any other person who requests such service. If evidence is presented, reasonable cross-examination shall be allowed. The Information Practices Officer, Executive Director, and General Counsel may participate in the hearing.~~

~~———— (d) ——— Commission Decision.~~

~~———— (1) ——— Procedure.~~

~~———— The Commission's decision shall be based on the petition and application, the oral argument, and any evidence presented. If the Commission determines that the record is not exempt from the disclosure requirements of the Public Records Act, or that it is exempt but that the record should nevertheless be disclosed, it shall issue an order that the record be disclosed. If the record is one for which confidential treatment was requested by a private third party, the order to disclose the record shall not be effective until thirty days after the order is issued to allow the applicant to seek judicial review; however, the order shall be final upon issuance and shall not be subject to reconsideration. If the Commission determines that the record is exempt from disclosure and should not be disclosed, an order to that effect shall be issued; such order is final and effective upon issuance.~~

~~———— (2) — Criteria for Decision.~~

~~———— (A) — The Commission shall not disclose any record whose disclosure is prohibited by law.~~

~~———— (B) — The Commission shall disclose any record which is not authorized by law to be kept confidential.~~

~~———— (C) — The Commission shall disclose any record exempted from disclosure by Section 6254(a) of the Government Code unless the public interest in nondisclosure clearly outweighs the public interest in disclosure.~~

~~———— (D) — The Commission shall disclose any record exempted from disclosure by Section 6254(c) of the Government Code unless disclosure would constitute an unwarranted invasion of personal privacy.~~

~~———— (E) — The Commission shall disclose any record exempted from disclosure by Section 6254(i) of the Government Code unless disclosure would result in an unfair competitive disadvantage to the person supplying the information.~~

~~———— (F) — The Commission shall disclose any record exempted from disclosure by Sections 6254(b), 6254(d), 6254(e), 6254(f), 6254(g), 6254(h), 6254(j), 6254(k), 6254(l), 6254(m), or 6254(n) of the Government Code unless the public interest in nondisclosure outweighs the public interest in disclosure.~~

~~———— (G) — The Commission shall disclose any other record unless the public interest in nondisclosure clearly outweighs the public interest in disclosure.~~

~~———— In weighing the public interests in disclosure and nondisclosure, the Commission shall consider whether the record has played or will play a part in a Commission decision, whether the public interest in disclosure could be served by presenting the information in an alternate form which lessens the harm to the applicant, the extent to which disclosure would affect the Commission's ability to obtain information in the future, the probability and extent of harm to be suffered by the applicant if the record is disclosed, and other relevant factors.~~

~~COMMENT: The Public Records Act establishes a general rule that public records shall be disclosed to any person upon request. (Government Code Sections 6250, 6253.) In Section 6254 the Act sets forth a number of exemptions, for specified types of records, from this general requirement of disclosure. The courts have declared that these~~

~~exemptions "are permissive, not mandatory; they permit nondisclosure but do not prohibit disclosure." Black Panther Party v. Kehoe, 42 Cal. App. 2d 645, 656, 117 Cal. Rptr. 106, 113 (1974). That is, even though a record is exempted from disclosure by one of the specific provisions of Section 6254, the Commission has the discretion to release the record. The law on this subject indicates that the Commission should exercise this discretion by withholding records only when the public interest in nondisclosure outweighs the public interest in disclosure. 53 Ops. Cal. Atty. Gen. 136, 143 (1970); Black Panther Party v. Kehoe, 42 Cal. App. 3d 645, 656, 117 Cal. Rptr. 106, 113 (1974); Uribe v. Howie, 19 Cal. App. 3d 194, 206-207, 209-211, 96 Cal. Rptr. 493, 500, 502-504 (1971). Section 2506(d)(2)(F) of the regulations implements this principle.~~

~~Government Code Sections 6254(a), 6254(c), and 6254(i) contain somewhat different tests for determining whether a record exempted by one of these Sections should be disclosed. Sections 2506(d)(2)(C), 2506(d)(2)(D), and 2506(d)(2)(E) of the regulations implement these tests. Many public records are not covered by any of the specific exemptions in Section 6254 of the Government Code. Section 6255 states that the Commission may withhold any such record only if the public interest in nondisclosure clearly outweighs the public interest in disclosure. Section 2506(d)(2)(G) of the regulations reflects this rule.~~

~~(e) List of Records Determined to be Confidential. The Executive Director shall maintain a list of records the Commission orders held confidential pursuant to Section 2506(d). Any petition for such information shall be deemed denied unless the petitioner alleges changed circumstances which require a reversal of the Commission's previous order. A petition for such information shall be returned to the petitioner with a copy of the Commission's previous order, a copy of these regulations, and an explanation of the requirement to show changed circumstances. An amended petition may be submitted.~~

~~NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Sections 25223 and 25321, Public Resources Code and Sections 6250-6261, Government Code.~~

2506. Request for Inspection or Copying of Confidential Records

(a) Form of Request. A request for inspection or copying of any confidential record shall be a written petition to the Commission, and shall be served on the Chief Counsel. It shall state the facts supporting a conclusion that the Commission should disclose the confidential record.

(b) Delegation of Commission Decision to the Chief Counsel.

(1) The decision of the Commission on a request for inspection or copying of confidential records is delegated to the Chief Counsel.

(2) If the request is for inspection or copying of a record received from a private third party, a person under contract to the Commission, or another government agency, the Chief Counsel shall, within one day of service of the petition, provide a copy of the request to the person or entity that submitted the information and a written request for written approval of release of the record. Any party not wishing to give permission for the record's release may supplement the initial application for confidential designation, if any, within five working days of the receipt of the request for permission. Failure to respond to the Chief Counsel's request to release the record shall not be deemed consent for release.

(3) The Chief Counsel shall issue a decision on the request within ten days of its service on the Chief Counsel. A decision that a record should be disclosed shall ordinarily be effective fourteen days after issuance, although the Chief Counsel may order earlier disclosure in unusual circumstances, consistent with maintaining the opportunity of the person originally submitting the information to prevent its release by appealing the Chief Counsel's decision to a court of competent jurisdiction. A decision that the record is exempt from disclosure shall be effective immediately.

(4) Any party may appeal the Chief Counsel's decision to the full Commission. Any such appeal shall be filed within fourteen days, and shall be heard and decided by the Commission within four weeks of the filing of the appeal.

(c) List of Records Determined to be Confidential. The Executive Director shall maintain a list of records the Commission orders held confidential pursuant to this section. Any petition for such information shall be deemed denied unless the petitioner alleges changed circumstances which require a reversal of the Commission's previous order. A petition for such information shall be returned to the petitioner with a copy of the Commission's previous order, a copy of these regulations, and an explanation of the requirement to show changed circumstances. An amended petition may be submitted.

§ 2507. Disclosure of Confidential Records.

(a) No confidential record shall be disclosed except as provided by this section or Section 2506, unless disclosure is ordered by a court of competent jurisdiction.

(b) No record which is the subject of a pending application shall be disclosed except as provided by this section or Section 2506 and any request to copy or inspect a document which is the subject of a pending application shall be processed in accordance with the provisions of Section 2506.

(c) The Executive Director may disclose records determined confidential pursuant to Section 2505 or Section 2506 to:

(a1) Commission employees whose Commission work requires inspection of the records.

~~COMMENT: All Commission employees are required to sign an agreement forbidding disclosure of trade secrets or other confidential records.~~

(b2) Persons under contract to the Commission whose work for the Commission requires inspection of the records and who agree in a contract to keep the records confidential.

(c3) Other governmental bodies which have a need for the records related to their official functions and which agree to keep the records confidential and to disclose the records only to those employees whose agency work requires inspection of the records. On behalf of the Commission the Executive Director may request and agree to maintain the confidentiality of other agencies' confidential records.

~~(d) Any person, provided that the Executive Director has masked or aggregated the information in the manner indicated by the applicant pursuant to Section 2505(a)(5), or provided the applicant has otherwise consented in writing to the disclosure.~~

(4) Other entities who have entered into an agreement with the Commission to keep the records confidential.

(d) The Executive Director may release records designated confidential if the information has been masked or aggregated to the point necessary to protect confidentiality.

(i) Aggregations of energy use must consist of data from three or more consumers and no customer may constitute more than 60 percent of the aggregated total.

(ii) Aggregation of specific responses to questions in energy surveys must consist of three or more responses, although specific responses of residential customers to energy surveys may be released if the submitted information does not include the customer's name, address, or account number.

(e) The Executive Director may release records previously designated confidential upon the receipt of written permission for such release from all entities who have the right

to maintain the information confidential, or under any other circumstances in which the information is no longer entitled to confidential treatment.

(ef) The Executive Director shall ~~advise~~ consult with the private third party to whom the confidential designation belongs ~~of~~ about the disclosure to persons in subsections ~~(b)~~, (c) and (d) of this section of records determined confidential pursuant to Section 2505 or Section 2506.

NOTE: Authority cited: Section 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

~~§ 2508. Pending Requests for Confidentiality.~~

~~— All petitions, requests, and other expressions of a desire that the Commission maintain particular records confidential, including but not limited to petitions pursuant to Section 25321 of the Public Resources Code, which have submitted to the Commission before the effective date of this article, are deemed granted pursuant to Section 2505. All other provisions of this article, including 2506, are applicable to such records.~~

~~NOTE: Authority cited: Section 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Sections 25223 and 25231, Public Resources Code.~~

§ 2509. Security of Confidential Records.

The Executive Director is responsible for maintaining the security of confidential records and records determined by the Commission to be unavailable pursuant to Sections 2505 and 2506.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

§ 2510. Delegation of Authority and Responsibilities.

The Executive Director may delegate any of his or her authorities or responsibilities under this Article to any Division Chief.

NOTE: Authority cited: Sections 25213 and 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.

~~§ 2511. Information Practices Act.~~

~~Nothing in this article shall be interpreted or applied in a manner inconsistent with the Information Practices Act of 1977 (Chapter 1, Title 1.8, Part 4, Division 3 of the Civil Code, Sections 1798.1-1798.76). In particular, notwithstanding any other provision of this Article:~~

~~(a) Personal information contained in individual employment or medical files, or other personal information which would clearly be disparaging of or threatening to the reputation or rights of an individual other than a state employee acting in his or her official capacity, shall not be publicly disclosed.~~

~~(b) Any individual may obtain any record containing personal information concerning him or her which is accessible pursuant to the provisions of the Information Practices Act of 1977.~~

~~For purposes of this section, the definitions of "individual" and "personal information" in Sections 1798.3(b) and 1798.3(f) of the Civil Code shall apply.~~

~~COMMENT: Subsections (a), (b), and (c) implement Sections 1798.24(g), 1798.60, and 1798.70 of the Civil Code. They are not necessarily a complete list of the relevant restrictions of the Information Practices Act of 1977. The Commission's Information Practices Office is available to answer questions about the Commission's implementation of that Act.~~

~~NOTE: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code and Section 1798.70, Civil Code.~~